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REMARKS

The Official Action of October 23, 2008 and the references cited therein as well as the Examiner's comments made in a telephone conversation on January 13, 2009 (regarding the deletion of claims 16-19 and correcting trademarks in claim 23 and on page 15 of the specification) have been carefully considered. The updated amendments and remarks herein are considered to be responsive thereto. Claims 13-15 and 20-23 remain in the case. No new matter has been added.

The Examiner continues to state that Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 USC 119(e) because the disclosure in USSN 60/424,790 and USSN 60/500,094 do not have support for when the variables R4 and R5 are SOqC1-6 alkyl, COC1-6 alkyl and OCF3 as in the instant application. Applicants respectfully submit that claim 14 as currently amended is fully supported by the disclosure in USSN 60/424,790 and USSN 60/500,094.

Claims 13-15 and 20-23 are objected to as containing non-elected subject matter. Specifically, the Examiner further states that the definition when R2 and R3 are combined with Q and 8th compound in Table 1 of claim 15 are not part of the elected invention. Claims 13 and 15 have been herein amended to delete the non-elected invention.

Claim 13 is further object to for failing to start with a capital letter. Capital letter "A" has been added to the beginning of claim 13 to address this matter.

Claims 12, 15 and 20-23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 6 and 11-14 of co-pending application No. 11/630172. The Examiner states that claims 1-3 and 5 of US/630172 overlap with the claimed compounds. Applicants believe that the currently amended claims are in condition for allowance and submit that if a terminal disclaimer is deemed necessary it be addressed in co-pending application No. 11/630172.

In the telephone conversation of January 13th Examiner requested that the claims would be in condition for allowance if claims 16-19 were withdrawn and claim 23 and the specification on page 15 be amended to reflect the proper trademark recognition for Rescula. By this updated amendment claims 16-19 have been withdrawn without prejudice to refile, and the appropriate trademark recognition for Rescula changed in claim 23 and on page 15 of the specification. All other compound names listed on pages 14 and 15 (e.g., Apamin, Iberiotoxin) are generic names rather than brand names and therefore require no trademark recognition.

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The Examiner discusses art relating to non-elected subject matter on pages 6 and 7 of the October 23rd office action. Applicants will address this issue in the divisional application that will be filed.

Respectfully submitted,

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Date: January 14, 2009